

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

DANIEL J. LEVETO	:	CIVIL NO. 05-00149 Erie
	:	
Plaintiff,	:	
v.	:	
	:	
THE HONORABLE MAURICE B. COHILL	:	Magistrate Judge Susan Paradise
	:	Baxter
Defendant.	:	

DEFENDANT'S MOTION TO DISMISS

The Defendant, Honorable Maurice B. Cohill, United States District Judge for the Western District of Pennsylvania, by and through undersigned counsel, submits this motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). The Defendant asserts that the plaintiff's complaint fails to state a claim upon which relief can be granted.

In support of this motion Defendant relies on and incorporates by reference his Memorandum of Law in Support of Defendant's Motion to Dismiss filed contemporaneously herewith.

WHEREFORE, Defendant respectfully requests that this Court grant his motion to dismiss because the plaintiff's complaint fails to state a claim upon which relief can be granted.

Date: July 19, 2005

Respectfully submitted,

THOMAS A. MARINO
United States Attorney

/s/ D. Brian Simpson
D. BRIAN SIMPSON
Assistant U.S. Attorney
Attorney I.D. No. OH 0071431
U.S. Attorney's Office
228 Walnut Street, 2nd Floor
Harrisburg, PA 17108-1754
Phone: 717-221-4482
Fax: 717-221-2246
D.Brian.Simpson@usdoj.gov

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

DANIEL J. LEVETO	:	CIVIL NO. 05-00149 Erie
	:	
Plaintiff,	:	
v.	:	
	:	
THE HONORABLE MAURICE	:	
B. COHILL	:	Magistrate Judge Susan Paradise
	:	Baxter
Defendant.	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers. That on this Tuesday, July 19, 2005, she served a true and correct copy of the foregoing

DEFENDANT'S MOTION TO DISMISS

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the places and addresses stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail in Harrisburg, Pennsylvania.

Daniel J. Leveto, *pro se*
Erie County Prison
1618 Ash Street
Erie, PA 16503

Dated: July 19, 2005

/s/ Chyenna Gowdy
CHYENNA GOWDY
Legal Assistant